IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9239 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHNUBHAI @ VIJA HARJIBHAI CHAUDHARY (MARWADI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9239 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MR AD OZA ld. GP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

Leave to amend.

By way of this special civil application, the present petitioner has challenged the order of Police

Commissioner, Ahmedabad city passed on 24.1.2003 in exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short) directing detention of the petitioner on the ground that the petitioner was "dangerous person" within the meaning of PASA Act and his activities were prejudicial to the public order. The petitioner is under detention in pursuance of the above said order right from 24.1.2003.

The grounds of detention reveal that the detaining authority relied upon the three crimes registered against the petitioner under sec. 379 of IPC on 9.10.2002, 23.10.2002 and 5.1.2003 and alleged to have stolen Maruti Zen Car, Bajaj Scooter and one Maturi Esteem Car. In addition to this, the detaining authority also relied upon the statements of two witnesses whose identities were not disclosed under sec. 9(2) of the PASA Act. The statement of the witness is recorded on 20.1.2003 and the others statement is recorded on 22.1.2003. The statements are verified by the detaining authority on 22.1.2003. One witness stated that on 20.2.2002 the petitioner accosted the witness and threatened him on suspicion that the witness was offering information to the police as to the petitioner's activities relating to the theft of vehicles. The other witness stated that on 7.1.2003 the petitioner threatened him and from the pocket of his shirt, the petitioner has snatched Rs. 3000/-. When crowd was gathered, the petitioner with open knife rushed towards the crowd which was due to fear dispersed. These are the materials upon which the order impugned came to be passed.

Ld. advocate Ms. Subhadra Patel and ld. GP Mr AD Oza were heard at length. Ld. GP has placed on record the affidavit in reply filed by the detaining authority which is taken on record.

Various contentions have been raised on behalf of the petitioner to assail the impugned order. From the rival contentions and from the record of the case, it transpires that this petition can be disposed of on the ground of non-application of mind by the detaining authority. It is clear from the grounds served upon the petitioner for detention that at the time of service of detention order, in one of the crime registered against the petitioner out of three, the petitioner was under judicial custody. Therefore, the detaining authority reached to subjective satisfaction that the petitioner was likely to file bail application and was likely to be released on bail in time and if so happens, than the

petitioner was likely to continue his illegal activities. According to the ld. advocate for the petitioner, this is total non-application of mind and the satisfaction arrived at is based on no material. Ld. GP has relied upon a decision of the Apex Court in the matter of Abdul Sathar Ibrahim Manik vs. Union of India and ors., as reported in AIR 1991 SC p. 2261. Ld. advocate for the petitioner has made a statement that in the crime in which the petitioner is in judicial custody, has not moved any bail application. True, it is that it is for the detaining authority to derive necessary satisfaction on the basis of material placed before him as laid down by the Supreme Court in the above case of Abdul Sathar Ibrahim Manik (supra) , but the question whether any such material was available before the detaining authority and whether the detaining authority applied its mind to this materially vital aspect of the matter and, thereafter reached to the subjective satisfaction as required by law. On scrutiny of the record and even from the affidavit filed by the detaining authority, it is nowhere revealed that there was any material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail and was likely to continue his illegal activities. In the matter of Amritlal and other vs. Union Government through Secretary, Ministry of Finance and others as reported in AIR 2000 SC 3675, the Apex Court made it amply clear that the subjective satisfaction of the detaining authority must be based upon cogent material even in respect of "detenu was likely to be released on bail". The facts of this case, therefore, are squarely covered from the decision of the Supreme Court in the matter of Amritlal and ors. vs. Union Government (supra), as referred above.

In this view of the matter, this special civil application is allowed. The order impugned passed by the Police Commissioner, Ahmedabad city on 24.1.2003 under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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